

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

<b>JOMO BARNETT,</b>	)	
<b>Plaintiff,</b>	)	<b>C.A. No. 23-248 Erie</b>
	)	
<b>v.</b>	)	<b>District Judge Susan Paradise Baxter</b>
	)	<b>Magistrate Judge Richard A. Lanzillo</b>
<b>HONORABLE JUDGE J. MEAD, et al.,</b>	)	
<b>Defendants.</b>	)	

**MEMORANDUM ORDER**

On August 21, 2023, Plaintiff Jomo Barnett, an inmate incarcerated at the Erie County Prison in Erie, Pennsylvania (“ECP”), initiated this action by lodging a complaint without an accompanying motion to proceed *in forma pauperis* or payment of the filing fee. He then filed a motion for leave to file an amended complaint on September 5, 2023 [ECF No. 2], followed by the filing of a motion to proceed *in forma pauperis* (“*ifp* motion”) on September 18, 2023 [ECF No. 4]. The action was referred to Chief United States Magistrate Judge Richard A. Lanzillo for report and recommendation in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrate Judges.

On December 13, 2023, Judge Lanzillo entered an Order granting Plaintiff’s *ifp* motion and his motion for leave to file amended complaint [ECF No. 10], and Plaintiff’s proposed amendment was docketed on the same day as Plaintiff’s amended complaint [ECF No. 11].<sup>1</sup> In his pleadings, Plaintiff maintains that a host of individuals acting pursuant to state law have

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Although docketed as an amended complaint, it appears as though Plaintiff may have intended the amendment to be a supplement to his original complaint. Thus, although the “amendment” appears to replace the original Defendants with five new Defendants, it is likely that Plaintiff intended to add the new Defendants to the list of original Defendants named in his original complaint. If so, the Clerk’s termination of the original Defendants on the docket was in error. However, this docketing error does not alter the Court’s conclusion herein.

violated his constitutional rights during an ongoing criminal drug prosecution in the Court of Common Pleas of Erie County. Included among the many Defendants are: the judge overseeing his criminal proceedings; the district attorney, assistant district attorney, and public defender involved in his prosecution; the police officers who effectuated his arrest and secured evidence during a contemporaneous security sweep; and numerous governmental entities including Erie County, the City of Erie Police Department, the Pennsylvania Board of Probation and Parole, the Erie County District Attorney's Office, and the Erie County Public Defender's Office.

On January 2, 2024, Chief Magistrate Judge Lanzillo issued a Report and Recommendation (“R&R”) recommending that this action be dismissed as frivolous for failure to state a cognizable claim upon which relief may be granted, pursuant to 28 U.S.C. 1915(e). [ECF No. 13]. In particular, Judge Lanzillo found that Plaintiff’s claims challenging his criminal ongoing prosecution conviction and detention are barred by the United States Supreme Court’s holding in Heck v. Humphrey, 512 U.S. 477, 486-87 (1994). Nonetheless, while Judge Lanzillo found that amendment of Plaintiff’s claims would be futile and, thus, his claims should be dismissed in this Court with prejudice, he recommends that the claims be dismissed without prejudice to Plaintiff’s right to challenge his conviction in a properly filed habeas corpus petition after his state proceedings are terminated, and/or without prejudice to Plaintiff’s right to file a renewed civil rights complaint to seek damages for malicious prosecution or abuse of process if his criminal conviction is later overturned in state court.

Timely objections to the R&R were filed by Plaintiff on January 10, 2024 [ECF No. 14]; however, these objections do not overcome the bar of Heck v. Humphrey upon which the Magistrate Judge’s recommendation is based.<sup>2</sup>

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Thus, after *de novo* review of the documents in this case, together with the report and recommendation and the objections thereto, the following order is entered:

AND NOW, this 16th day of April, 2024,

IT IS HEREBY ORDERED that this action is DISMISSED, with prejudice, for failure to state a cognizable claim upon which relief may be granted, pursuant to 28 U.S.C. § 1915(e).

Nonetheless, such dismissal is without prejudice to Plaintiff's right to: (i) challenge his conviction in a properly filed habeas corpus petition after his state criminal proceedings are terminated, and/or (ii) file a renewed civil rights complaint to seek damages for malicious prosecution or abuse of process if his criminal conviction is later overturned in state court. The report and recommendation of Chief Magistrate Judge Lanzillo, dated January 2, 2024 [ECF No. 13], is adopted as the opinion of this Court.

As there are no further matters pending before the Court, the Clerk is directed to mark this case "CLOSED."

  
SUSAN PARADISE BAXTER  
United States District Judge

cc: The Honorable Richard A. Lanzillo  
Chief United States Magistrate Judge

All parties of record

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Plaintiff also filed another document purporting to be "objections" to the R&R on January 26, 2024 [ECF No. 15]. Besides being filed late, these "objections" merely request the right to amend the complaint and to have certain discovery material produced and/or preserved. These requests are not appropriate "objections" to be considered by the Court